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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Richard Seeborg, Judge

GGCC, LLC, an Illinois Limited)
Liability Company, individually)
and on behalf of all others)
similarly situated,)

Plaintiff,)

VS.)

NO. C 17-06779 RS

DYNAMIC LEDGER SOLUTIONS,)
INC., a Delaware corporation;)
et al.,)

Defendants.)

AND RELATED CASES.)

San Francisco, California
Thursday, April 30, 2020

TRANSCRIPT OF PROCEEDINGS BY ZOOM

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Thursday - April 30, 2020

1:30 p.m.

P R O C E E D I N G S

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THE CLERK: 17-cv-6779, In Re Tezos Securities
Litigation.

Counsel for plaintiffs, can you state your appearances
first, please.

MR. BLOCK: Certainly. Good afternoon, Your Honor.
Jeffrey Block, Block & Leviton, for Trigon and for the
plaintiffs.

THE COURT: Good afternoon.

MR. TA: Good afternoon, Your Honor. This is Hung Ta
from HGT Law, on behalf -- co-lead plaintiff -- co-lead counsel
for the plaintiffs and also counsel for the named plaintiffs
Artiom Frunze, Pumaro LLC, Gijs Master, and Hayden Hsiung.

THE COURT: Good afternoon.

MR. OLTS: Good afternoon, Your Honor. Lucas Olts on
behalf of the state court plaintiff Andrew Baker.

THE COURT: Good afternoon.

Is that everyone on the plaintiffs' side?

UNIDENTIFIED SPEAKER: This meeting is being recorded.

THE CLERK: Sorry about that.

THE COURT: Okay. Now the recording is now starting.

The plaintiffs have made their appearances. So on the
defense side?

1 **MR. POTISCHMAN:** Good afternoon, Your Honor.

2 Neal Potischman from Davis Polk on behalf of the Tezos
3 Foundation.

4 **THE COURT:** Good afternoon.

5 **MR. KLEIN:** Good afternoon, Your Honor. Brian Klein
6 on behalf of Arthur and Kathleen Breitman.

7 **THE COURT:** Good afternoon.

8 **MR. GIBBS:** Good afternoon, Your Honor. Patrick Gibbs
9 from Cooley on behalf of Dynamic Ledger Solutions, and also on
10 the call are my colleagues Jessica Valenzuela Santamaria and
11 Jessie Simpson Lagoy.

12 **THE COURT:** Very good. Good afternoon.

13 **MS. SANTAMARIA:** Good afternoon, Your Honor.

14 **THE COURT:** Good afternoon. So it is obvious we're
15 now in this brave new world of doing things by videoconference.
16 I will tell you this is -- I've done a few on the criminal
17 side, but this is the first civil proceeding I've tried doing
18 this method so bear with me if we have some stumbles. I have
19 to admit I much prefer my grand courtroom, but we have to
20 adjust.

21 So this is set for hearing on preliminary approval, and I
22 think we all know the standard that I have to apply here is
23 whether or not the proposed settlement is within the general
24 parameters of fair, reasonable, and adequate.

25 I have reviewed what has been submitted, and I have some

1 particular questions as we go through this; but not to keep you
2 in suspense, I do think this -- my initial read certainly is
3 that it's a solid settlement and one that I think we'll be able
4 to proceed forward with.

5 And I do recognize it was negotiated arm's length. You
6 had a well-known mediator who helped you, and this is a new
7 terrain in this litigation so that is also something to take
8 into account.

9 Rather than my going through all of the particulars -- the
10 \$25 million fund, the different aspects of it all -- if it's
11 acceptable to the parties, let me just go right to the
12 questions that I have; and if there's an area that I haven't
13 covered, it means that I really don't have any particular
14 problems with it.

15 By that I mean there are aspects, as you-all know, of the
16 checklist now that we have in the Northern District, things
17 like no reversion of the settlement funds and various other
18 things, and it does appear to me that in most respects you've
19 addressed the issues that I would want to have discussed.

20 So let me just go into a couple of these particular issues
21 that I would like to go over.

22 Actually, before I do that, not to cut off the parties, if
23 there's anything that either plaintiffs or the defense side
24 thinks you want to summarize at this point, I think your papers
25 do a nice job of that, but I don't want to cut you off if

1 there's something you want to make clear on the record.

2 **MR. BLOCK:** For plaintiffs, Your Honor, Mr. Block.

3 I think we set it out in the papers and it sounds like,
4 you know, you've obviously read them and I think you have a
5 pretty good handle on the settlement so I think we'd just be
6 prepared to address any specific questions that you may have.

7 **THE COURT:** Okay. Let me start with your plans with
8 respect to notice. There is an estimate in your papers as to
9 the percentage you think you can reach through the use of
10 e-mail address, and then I know you've got a proposal through
11 various publication outlets to get the word out.

12 I was curious. First of all, how did you come up with the
13 estimate on how successful you think the e-mail approach will
14 be? You have a calculation for me on how many you think you'll
15 reach. How did you come up with that?

16 **MR. BLOCK:** Sure, Your Honor. I think -- I don't
17 think we were as clear as we should have been in the papers.
18 That estimate we referred to, we referred to I think -- I think
19 what you're talking about is it's an estimate of about 7500
20 people submit claim forms.

21 **THE COURT:** Right.

22 **MR. BLOCK:** That's the estimate we got from the claims
23 administrator from what they typically see as an estimate of a
24 percentage of our class on how many they will submit -- how
25 many claims forms will be submitted, and that sort of was the

1 basis that drove their cost estimate for the claims
2 administration.

3 **THE COURT:** So that's just -- that's kind of a generic
4 estimate. It's not specific to this case or --

5 **MR. BLOCK:** Exactly. Exactly. We actually think in
6 this case because we're going to get all the e-mail addresses,
7 we think we're going to reach almost the entire class directly
8 with, like, direct notice. I mean, sure, there's some people
9 that probably have changed their e-mail addresses, and that's
10 why we've gone to the other lengths of, you know, putting stuff
11 on Reddit and on Twitter and on the Google website, et cetera,
12 to maybe reach some of those people. But we feel pretty
13 confident that we're going to get -- at least reach almost
14 everybody, and obviously then they will decide what they will
15 do.

16 **THE COURT:** Okay. Just remind me. When people made
17 their contribution/investments, you know, did they do that by
18 virtue of communications through an e-mail communication? I
19 know that there was -- one of the issues you have to wrestle
20 with here is that there's a certain anonymous quality to some
21 of the -- how do you say it? -- movement of the funds. So is
22 that how everyone would make their transfer of money -- or
23 transfer of bitcoin or Ethereum or whatever?

24 **MR. BLOCK:** Yeah. My understanding is when everybody
25 made their initial contribution, one of the things they had to

1 do was submit an e-mail address. Now, you can make up whatever
2 e-mail address you want to protect your identity, but there is
3 an e-mail address associated with each wallet, if you will. So
4 my understanding is unless those e-mail addresses have changed
5 or been deleted, we should be able to reach pretty much
6 everyone.

7 **THE COURT:** So we should do much better than the
8 generic estimate.

9 **MR. BLOCK:** I would hope so, yes.

10 **THE COURT:** Okay. All right.

11 This is not in any order of importance, but you've I think
12 explained for me the -- you picked the claims administrator and
13 picked Epiq, it's a name I'm familiar with, after a bid
14 process.

15 I think you said you had six bids, and one of their
16 selling points was the international experience they have, and
17 that makes sense.

18 Was that the lowest bid? I'm just curious.

19 **MR. BLOCK:** They were --

20 **THE COURT:** It doesn't have to be, but --

21 **MR. BLOCK:** Yeah, I think they were pretty much
22 towards the lowest. And, you know, one of the things that we
23 do is we don't just look to see who's the cheapest.

24 **THE COURT:** Right.

25 **MR. BLOCK:** We also want to get who we think is the

1 best. So we sort of felt that Epiq had the best blend of a
2 really good price along with the experience, and the
3 international aspect was a big selling feature so that was a
4 big part of it.

5 **THE COURT:** The *cy pres* part of this process, in what
6 you provided to me, this would be for distributions that
7 despite the hope that the e-mail addresses are going to take
8 care of the bulk of it all, there may be some that you can't
9 get to and so there might be some that -- some instances where
10 the money comes back and you're going to have to distribute
11 that, which is I assume what we're talking about. There's no
12 separate *cy pres* distribution. It's for the stuff that can't
13 be distributed; right?

14 **MR. BLOCK:** Exactly, Your Honor, yes.

15 **THE COURT:** Okay. Under our guidelines, we do look to
16 have some understanding of either who the -- what entity or
17 entities are being selected or how those entities are going to
18 be selected. So I wasn't clear on what is it's -- because it's
19 not a separate distribution, I'm not as concerned about it as I
20 would be if that was the centerpiece of the proposed
21 settlement, but how are you going to pick the *cy pres*? Well, I
22 guess a better question is: Why didn't you pick one now? I
23 mean, why are we waiting?

24 **MR. BLOCK:** That's a good question, Your Honor. I
25 think it's probably something that what I've usually done in

1 cases is when we get to the end, if there is some money left
2 over, we'll consult with the defendants as far as what their
3 views are; and then we'll always go to the Court and we will
4 get Your Honor's approval.

5 Oftentimes we try to make it somewhat related to either
6 what the case is about or to something legal related, whether
7 it's --

8 **THE COURT:** Right. In fact, there was circuit law
9 that for a long time you had to make sure you had that nexus.
10 I think that's eased up a little bit, but that's a good idea.

11 It's not critical, but I actually would encourage you to
12 go ahead and do that sooner rather than later. If you happen
13 to be able to identify that and it could go out in the -- with
14 the information about the settlement, I would think it would be
15 good, but it's not critical and you can clean that up at the
16 end of it.

17 Another just general question about your estimate on the
18 number of claim forms you anticipate will be submitted. As we
19 talked about, hopefully with the e-mail addresses you can get
20 to a large number, and I think the class size is north of
21 30,000 if I read the papers correctly. But then you're
22 estimating that you think the number of claim forms are going
23 to be in the neighborhood of about 7500 or thereabouts. So how
24 did you come up with that estimate?

25 **MR. BLOCK:** Well, again, that comes from the claims

1 administrator based on their prior experience, the typical
2 claims submission in the case. You know, what always happens
3 is you send out the claim form. A lot of people ignore it.
4 People may say, "Well, I didn't lose any money. I'm not going
5 to submit anything." I mean, so it's just sort of that generic
6 estimate --

7 **THE COURT:** Okay.

8 **MR. BLOCK:** -- of how many people may submit.

9 **THE COURT:** Do you have an estimate, if it was 7500 or
10 thereabouts, what would the payout be?

11 **MR. BLOCK:** That is very difficult to say because what
12 we --

13 **THE COURT:** It's the number of -- yeah.

14 **MR. BLOCK:** Yeah. Did people sell? What price did
15 they get when they sold? So what would be their amount? So
16 it's hard to guess.

17 **THE COURT:** Yeah, I hear you. Okay.

18 All right. Just, you know, because there could be in some
19 instances a significant amount of money involved, I would think
20 you would do perhaps better than the 7500, but we'll see.

21 Okay. The release looked fine to me. Just to confirm
22 with you, the release effectively is everything related to the
23 ICO, anything that could have been brought, any claims that
24 could have been brought, but it's confined to the initial coin
25 offering. It's not anything beyond that.

1 **MR. BLOCK:** Yes. Absolutely, Your Honor.

2 **THE COURT:** All right. You do a nice job of going
3 over the strengths and weaknesses of the case. Just to also
4 touch on that, the amount that was initially raised, if I have
5 the numbers right, are about 232 million was initially raised.
6 Then because the value of the cryptocurrency that was used
7 fluctuated rather substantially at various points, but that was
8 a lot of money right out of the box that was raised. And so
9 the settlement amount, which is the 25 million, is a smaller
10 amount percentagewise of that 230 million. And I don't know on
11 the plaintiffs' side, if you want to just summarize for me.

12 I took the main theme being, which I don't disagree with,
13 the uncertainty that's associated with the fact that this is a
14 new area, that whether or not the tokens would be deemed to be
15 securities or not, which is the centerpiece of your case, is
16 very much uncertain at not just what I would do if confronted
17 with that question but then there's -- we don't have a lot of
18 circuit law and certainly nothing from the Supreme Court on
19 that.

20 So I take it that is probably the main theme of what drove
21 the settlement?

22 **MR. BLOCK:** Yes, that's a large part of it,
23 Your Honor. There is -- you know, in any kind of a litigation
24 like this that's a complex case, there's a lot of risks. One
25 main was whether these would be considered securities and

1 should have been registered.

2 Another question is Morrison and how big the class would
3 be: Would people who bought overseas actually be part of this
4 class or would the class be smaller, just U.S. purchasers?

5 Another question that we know would be an issue is
6 certification of a class. We know that there are certainly
7 going to be some -- there would have been questions raised
8 about whether, you know, you had individual issues that would
9 have prevented certification, and I think it was the
10 contribution agreement and whether people knew that. So those
11 were some of the legal risks that we certainly were factoring
12 in.

13 As far as the damages, yeah, the total size of the
14 offering was 232 million, and then we also get to the question
15 of what would actually be the real damages that we could
16 recover at a trial. And you saw the pretty wide range of an
17 estimate. We had it, if we hit a home run and got everything,
18 as high as 150 million. Defendants conversely said, "Well, no,
19 you know, we think it would be maybe a million." And a lot of
20 that, there were a lot -- of course, any damage model there's
21 always a lot of assumptions baked into it. Part of it is how
22 many people held these things; when the price of bitcoin shot
23 up, did they sell so they didn't lose money.

24 Those were all the things that we didn't know, and those
25 were all the factors that we weighed. And when we looked at a

1 \$232 million offering, which would be the max we could recover
2 plus interest, a \$25 million settlement, which roughly is a
3 little bit more, a little less than 10 percent, but in a
4 typical securities case people are getting less than
5 10 percent. So we felt in a case like this 10 percent looking
6 at it that way and when you look at it as our maximum damages
7 that we felt we could get at trial of 150 million, you're now
8 at 16 percent. So we felt that really was a good recovery.

9 **THE COURT:** Okay.

10 **MR. POTISCHMAN:** Your Honor?

11 **THE COURT:** Yes.

12 **MR. POTISCHMAN:** This is Neal Potischman on behalf of
13 the Tezos Foundation.

14 I just wanted to circle back to one issue that you raised
15 just to make sure that we're all on the same page.

16 With respect to the release, I generally agree this is --
17 this release is targeted, you know, to the pleadings and the
18 pleadings are targeted on the claim about what we call the
19 fundraiser, what plaintiffs call an ICO. Plaintiffs' claims
20 did begin in this case, you may recall, with the filing of a
21 TRO alleging that money was disappearing or was being absconded
22 with, and Your Honor ultimately denied the TRO.

23 I think the release, even at that time the pleadings were
24 focused on the original fundraiser or what plaintiffs call the
25 ICO, but there were claims made about money disappearing. I

1 believe the release is worded broadly enough to release claims
2 relating to that same topic, which is by design. I don't think
3 that really changes the scope, but I wanted to make sure that
4 we were direct about the fact that we intend to seek a release
5 of claims in that space as well.

6 **THE COURT:** Right. Although that's still all swept up
7 in the ICO process; right? I mean, in other words, what I'm
8 obviously looking for is that if there are activities that have
9 nothing to do with the initial coin offering and somehow those
10 are being released in the process, that's a red flag. But from
11 what you've said -- what you've just said, I think it's -- it
12 would be fair to characterize that as also associated with the
13 ICO; isn't it? The activities you're talking about sound to me
14 like ICO-related activities.

15 **MR. POTISCHMAN:** Your Honor, there's no disagreement.
16 I guess I just wanted to be transparent about the fact that I
17 think the release language here is fairly typical in that it
18 includes anything that was raised or could have been raised in
19 the litigation.

20 **THE COURT:** Sure. Yeah.

21 **MR. POTISCHMAN:** And so some of these claims -- okay.
22 Thank you, Your Honor.

23 **THE COURT:** And I realize and I recognize that it's
24 claims that were raised or could have been raised so it's
25 obviously broader than the actual operative complaint, and I

1 recognize that if that is, you know, the point that you wanted
2 to confirm.

3 **MR. POTISCHMAN:** Thank you, Your Honor.

4 **THE COURT:** I just want to make sure that, you know,
5 personal injury claims and things like that are not being
6 released in the course of this settlement, and they're not.

7 There was reference to the -- and I'm very aware because
8 we had a lot of litigation about it, that there is a state
9 court proceeding, and I guess Mr. Olts is involved in that
10 state court activity. Does this resolve that, those issues, or
11 do those go on?

12 **MR. BLOCK:** Your Honor, this resolves the state court
13 case as well. This will resolve --

14 **THE COURT:** Okay.

15 **MR. BLOCK:** -- all litigation involving Tezos in the
16 United States. So the federal case and the state case.

17 **THE COURT:** Okay. Finally, the attorneys' fee
18 request, my understanding is the way this is structured is your
19 provision is that the counsel can seek -- plaintiffs' counsel
20 can seek up to a third. I do look to see -- to have the
21 lodestar -- we do the lodestar check against a percentage of
22 the fund when that's being requested, and there wasn't a
23 lodestar provided, and I think the putative class members are
24 entitled to take a look at that. So I would look to see, and I
25 think our guidelines contemplate, that the lodestar will also

1 be available to do the cross-check. So are you planning to do
2 that?

3 **MR. BLOCK:** Yes, Your Honor. We will make our
4 lodestar available. I will tell you right now that based on
5 information that I received, because I actually asked all our
6 counsel today what our collective lodestar is, and from the
7 information I've received so far, the lodestar that we've
8 incurred collectively will exceed what we're going to ask for,
9 but we will make that available to the class. We will ensure
10 it's on the website and when we file the papers so everybody
11 will see what it is.

12 **THE COURT:** Good.

13 And, you know, as we all know, the fees are not -- or the
14 settlement is not contingent on the fee award, and we'll deal
15 with the fee award at final approval. Just to, you know, make
16 sure you-all are alert to it, I suspect you-all know, the
17 Ninth Circuit law uses as a jumping-off point in a common fund
18 case 25 percent, and that doesn't mean it's only going to be
19 25 percent; but if that being the beginning of the discussion,
20 if you're seeking more than that as a percentage of the fund, I
21 want an explanation for why we would be departing from the
22 25 percent, but we'll deal with that when we get to the final
23 approval.

24 Okay. Anything else that we need to cover today?

25 **MR. BLOCK:** On the plaintiffs' we don't have anything

1 else, Your Honor.

2 **THE COURT:** Okay. Defense side? Mr. Gibbs? Anybody
3 else?

4 **MR. GIBBS:** Nothing from me, Your Honor.

5 **MR. KLEIN:** Nothing, Your Honor.

6 **THE COURT:** Okay. Well, as I say, I do find that the
7 proposed settlement is within the parameter of fair,
8 reasonable, and adequate, and I will preliminarily approve the
9 settlement.

10 I will give you a written order that memorializes the
11 preliminary approval, but we can deem it approved as of now.
12 So in terms of notice and the like, you can -- as I say, I've
13 approved it and I will just give my explanation, if you will,
14 in the written order form.

15 You did submit, I think, a proposed order, didn't you? I
16 think you did.

17 Okay. You need to unmute yourself, Mr. Block.

18 **MR. BLOCK:** Yeah. That's my first Zoom hearing so I'm
19 not used to it.

20 **THE COURT:** Yeah.

21 **MR. BLOCK:** Yes, Your Honor, we did submit a proposed
22 order.

23 **THE COURT:** Okay. Well, we'll -- I'll be utilizing
24 that, but it won't -- it will have some of my own gloss on it,
25 but we'll take that into account as well.

1 Okay. Anything from anyone else?

2 Just as, again, a matter of interest, have there been
3 any -- have you received any communications from putative class
4 members about the settlement? Do you anticipate that there
5 will be some objections based on what you've seen thus far?

6 **MR. BLOCK:** To date we have not received any feedback
7 from the class. I do know, and I think Your Honor may know
8 from the history of the case, this group tends to be a little
9 bit active and voice their opinions, and we thought that once
10 the settlement was announced and there was some publicity when
11 we reached the settlement, that we might hear something
12 negatively but we didn't. So so far so good.

13 **THE COURT:** Okay. With respect to the dates going
14 forward, did you have a proposed date for final approval? I'm
15 trying to remember.

16 **MR. BLOCK:** Well, I think, Your Honor, based on the
17 schedule that we proposed, minimum I think was 84 days to allow
18 the notice process to work. I think the earliest a final
19 approval hearing could be would be July 23rd. So our
20 preference would be anytime after that, obviously subject to
21 the Court's convenience.

22 **THE COURT:** Okay. Well, I will -- I'll set it on a
23 Thursday probably in August sounds like would make sense, and
24 I'll just go look at my schedule. The schedule is a mess as
25 you can imagine. So I'll see what it looks like.

1 But is everybody fine with I just pick a Thursday in
2 August? It's always at 1:30.

3 **MR. KLEIN:** Your Honor?

4 **THE COURT:** Yes.

5 **MR. KLEIN:** I tentatively have vacation planned, who
6 knows if that's going to happen, out of town the first two
7 weeks of August. I mean, I can call in or video in. If we're
8 going to do a Zoom one, great, I can definitely view it.

9 **THE COURT:** Well, I'm hoping that by August we
10 actually can be physically present. When is it that you
11 were -- because I'm flexible. We can just avoid the two weeks.

12 **MR. KLEIN:** It's the first two weeks of August,
13 Your Honor.

14 **THE COURT:** All right. Well, we'll go towards the end
15 of August then.

16 **MR. KLEIN:** Thank you, Your Honor. I hope we see each
17 other in person.

18 **THE COURT:** Yeah, I hope so. I hope so.

19 Okay. Anything further from anybody?

20 (No response.)


21 **THE COURT:** Very good. Thank you. That went pretty
22 smoothly, relatively smoothly.

23 So okay. Thanks very much. Stay safe, everyone. See you
24 in August.

25 **ALL:** Thank you, Your Honor.

---oOo---

DATE: Monday, May 11, 2020


Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter